

RESPONSE UNDER 37 C.F.R. § 1.116 - EXPEDITED PROCEDURE

Serial Number: 10/677,145

Filing Date: September 30, 2003

Title: ANNOTATING META-DATA WITH USER RESPONSES TO DIGITAL CONTENT

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REMARKS

This responds to the Final Office Action mailed on December 23, 2008.

No claims have been canceled, amended, or added. As a result, claims 48 and 54-62 are now pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

Rejection of Claims 48 and 56-60 under 35 U.S.C. §103(a) as Unpatentable over Rodriguez in view of Obrador in view of Seki

Claims 48 and 56-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rodriguez (U.S. 2003/0002862 A1) in view of Obrador (U.S. 6,585,521 B1) in view of Seki (U.S. 2002/0004751 A1).

The Examiner asserted that the combined teachings of Rodriguez, Obrador, and Seki teach the various elements of claims 48 and 56-60.

Rodriguez discloses a recordable media content purchasing system for a plurality of subscribers (Abstract and FIG. 1). Pricing may depend upon subscriber demand, such as for new releases and popular media content (Para. 0111). However, as the Examiner concedes¹, Rodriguez fails to disclose the following limitations of independent claim 48:

"the users . . . generating responses thereto;
collecting the users' responses to the digital item;
generating meta-data associated with the users' responses to the digital item;
storing the meta-data on the set-top boxes;
transferring the meta-data from the set-top boxes to the pay-per-view service;
the pay-per-view service analyzing the meta-data;"

The Examiner asserts that it would have been obvious to one of ordinary skill in the art to combine the teaching of Rodriguez with the method of indexing video based on viewers' behavioral and emotional responses, as taught by Obrador.

¹ Office Action, pages 3-4.

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Obrador discloses a video indexing system based on viewers' behavioral and emotional feedback while watching a multimedia sequence (Abstract). The indexed multimedia sequence may be sent to other users through a network so that friends and family members may selectively view the multimedia sequence (Col. 7, lines 40-45).

To establish a *prima facie* case of obviousness, the Examiner must show 1) that a person of ordinary skill in the art would have been motivated to combine (or modify) the prior art to achieve the claimed subject matter, and 2) that there would have been a reasonable expectation of success to combine (or modify) the prior art in the manner suggested by the Examiner. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, October 10, 2007, pp. 57526, 57534.

The Examiner has failed to prove 1) and 2) of the *Examination Guidelines*. Regarding 1), even if *arguendo* there would have been motivation to combine the teaching of Rodriguez and Obrador, the result would not achieve the subject matter recited in independent claim 48. As merely one example, the combination of Rodriguez and Obrador fails to teach the following limitations:

“transferring the meta-data from the set-top boxes to the pay-per-view service;
the pay-per-view service analyzing the meta-data;”

Obrador generates an indexed video sequence that may be transmitted to a network to be stored (col. 3, lines 55-65). However, there is absolutely no disclosure in Obrador of transferring meta-data associated with the users' responses to set-top boxes, or transferring the meta-data from set-top boxes to a pay-per-view service. Nor does Obrador disclose a pay-per-view service analyzing the meta-data. Obrador merely discloses transferring an indexed multimedia sequence through a network to friends and family, for example by email (col. 4, lines 48-52).

Regarding 2), the Examiner has shown nothing to establish a reasonable expectation of success to modify Rodriguez in the manner suggested. The Examiner asserted the combination of the two references would have been obvious, because “video indexing allows a user to have

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easy access to different sections of the video sequence, which would allow a user to more conveniently navigate a video sequence".² However, Obrador's method appears to be intended to provide video indexing for the benefit of friends and family who know the viewer and respect his or her personal taste and reactions to a multimedia item of mutual interest. In Obrador, the indexed multimedia item is transmitted one-to-one to a friend or family member.

If an indexed multimedia sequence, as generated by the teaching of Obrador, were transmitted to a pay-for-view control center of the type shown in Rodriguez, there is no teaching in either Rodriguez or Obrador of how to receive, process, and utilize such transmission in the context of a pay-per-view system. Further, the person or persons whose reactions were used to generate the indexing could very well deem it as an invasion of privacy for their reactions to be distributed to a pay-per-view system, rather than to their friends and family. Thus, there is no reasonable expectation of success to modify Rodriguez by Obrador, as the Examiner suggests.

The Examiner further concedes³ that the combination of Rodriguez and Obrador fails to teach the following limitations of independent claim 48:

"the pay-per-view service increasing a cost of subsequently distributing the digital item to set-top boxes if the users liked it; and

the pay-per-view service decreasing the cost of subsequently distributing the digital item to set-top boxes if the users disliked it"

The Examiner asserts that it would have been obvious to one of ordinary skill in the art to combine the combined teaching of Rodriguez and Obrador with the method of adjusting the cost of digital content proportionally to user ranking, as taught by Seki, "in order to increase net profit on popular content and to increase marketing competitiveness on unpopular content".⁴

Seki discloses a product sale management method to manage retail sales of a product (Abstract). The product price may be adjusted based upon a rank awarded in accordance with the popularity or user evaluation of the product (Para. 0026). Seki fails to disclose anything concerning multimedia or pay-per-view services.

² *Ibid.*, page 4.

³ *Ibid.*, page 5.

⁴ *Ibid.*, pages 5-6.

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Thus, the addition of Seki to the combination of Rodriguez and Obrador would not enable such combination to achieve the subject matter recited in independent claim 48. As merely one example, the combination of Rodriguez, Obrador, and Seki fails to teach the following limitations:

“transferring the meta-data from the set-top boxes to the pay-per-view service;
the pay-per-view service analyzing the meta-data;”

For the above reasons, independent claim 48 should be found to be allowable over any combination of Rodriguez, Obrador, and Seki, and Applicant respectfully requests that the rejection of claim 48 under 35 U.S.C. §103(a) should be withdrawn.

Further, those claims that depend from independent claim 48, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Rejection of Claims 54, 55, and 61 under 35 U.S.C. §103(a) as Unpatentable
over Rodriguez, Obrador, and Seki in view of Cliff**

Claims 54, 55, and 61 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rodriguez, Obrador, and Seki in view of Cliff (U.S. 6,885,304).

For the reasons presented earlier, independent claim 48 should be found to be allowable over Rodriguez, Obrador, and Seki. The addition of Cliff does not render claim 48 obvious.

Cliff discloses a human behavior or reaction monitoring method and apparatus, but this document contains no disclosure that would supply the limitations missing from the combination of Rodriguez, Obrador, and Seki, as argued above.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claims 54, 55, and 61, which depend from independent claim 48 and incorporate all of the limitations therein, is also asserted to be allowable for the reasons presented above.

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**Rejection of Claim 62 under 35 U.S.C. §103(a) as Unpatentable
over Rodriguez, Obrador, and Seki in view of Eldering**

Claim 62 was rejected under 35 U.S.C. §103(a) as being unpatentable over Rodriguez, Obrador, and Seki in view of Eldering (U.S. 7,150,030 B1).

For the reasons presented earlier, independent claim 48 should be found to be allowable over Rodriguez, Obrador, and Seki. The addition of Eldering does not render claim 48 obvious.

Eldering discloses a subscriber characterization system in which various parameters of a subscriber's program selection are monitored, including time duration that the program is watched (see Abstract), but this document contains no disclosure that would supply the limitations missing from the combination of Rodriguez, Obrador, and Seki, as argued above.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claim 62, which depends from claim 48 and incorporates all of the limitations therein, is asserted to be allowable for the reasons presented above.

Additional Elements and Limitations

Applicant considers additional elements and limitations of the rejected pending claims to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

Conclusion

Applicant respectfully submits that claims 48 and 54-62 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Ann M. McCrackin (located in Minneapolis, Minnesota) at (612) 349-9592 or Applicant's below-signed attorney (located in Phoenix, Arizona) to facilitate prosecution of this application.

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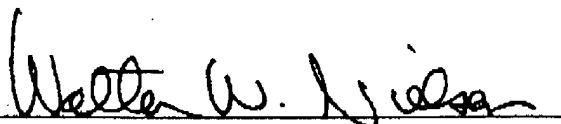
If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date March 23, 2009

By

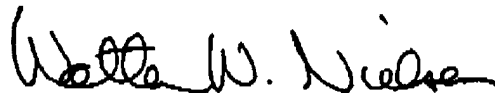


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed by facsimile ((571) 273-8300) and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 23rd day of March, 2009.

Walter W. Nielsen

Name



Signature